No. 49393-4 II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

SHANTEL P., WAZNY,

Appellant,

v.

STEVEN D. WAZNY

Respondent

REPLY BRIEF OF APPELLANT

LAW OFFICES OF JEAN SCHIEDLER-BROWN

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I CORRECTION TO RESPONDENTS' FALSE ASSERTIONS REGARDING THE RECORD

A. Summary of fallacies/correction

False claims regarding the irrelevant Deaton Report. Respondent Steve Wazny bases most of his defense of this appeal on an expert's report that he knowingly and falsely claims Appellant knew about prior to bringing her motions. This is a false statement. The wife's motions were filed February 9, 2016. CP 713-714. Steve Wazny filed the Deaton letter (2015) and report (3/1/2016) on March 7, 2016.with his response to the wife's motions CP 806—826. The Deaton report, addressed solely to Steve Wazny's counsel, is a private consultation for Mr. Miller; post-dissolution, Mr. Deaton was hired unilaterally by Miller. CP 816.[1]

The Deaton limitation-- "information known or knowable " at the valuation date was the only information relied upon for the opinion regarding whether the valuation of community businesses was correct. CP 816, 818, 822, 824. The Deaton report concludes that only bank information up to December 2012 as "relevant" to his December 2012

[1] Respondent's brief, at page 8, asserts that Shantel's attorney contacted Mr. Deaton with a list of documentation; The cited CP 816—826--pages verify that Mr. Deaton received all of that documentation from Mr. Miller, Mr. Wazny's counsel, who inexplicitly makes this false claim in his brief; Mr. Miller also gave Mr. Deaton additional documents never provided to the court record or the wife. Mr. Miller also tried to claim that Ms. Schiedler-Brown had consulted Mr. Deaton at the April 11, 2016 hearing, in which counsel advised the court that Mr. Deaton had refused to discuss any issues with her. CP 1037.

valuation. CP 817 and 823. This means he ignored any financial information from 2013 or 2014—the period of time upon which the wife relies in her allegations of laundered funds, and sudden post-decree profit distributions. Mr. Deaton's opinion does not speak to the issues brought by the wife. Likewise, in his discussion of possible fraud, besides nor disclosing the Partnership tax returns, CPA statements , or any other business financial reports for 2013 and 2014, (listed at CP 818.) Deaton accepts Mr. Wazny's verbal claim that he will provide documentation of the "loans" totaling $300,00.00. He is not acting as a financial analyst since he has not seen any documents, but rather, he is acting as an advocate. There is no competent evidence of record to contradict the bank records from 2013, 2014, and 2015 provided by the Wife.

Respondent also cites to an "opinion" at CP 829 that Mr. Deaton does not believe that Shantel understands the financial aspects of the business. This statement is part of a private letter of "comments" to Mr. Miller that was not provided to the wife until March 7, 2016, 3 days before arguing the motion on March 11. First, Mr. Deaton is not competent to opine as to standards for a vacate motion. Second, the letter is not a report but a summary comment, without citing the underlying data or reasons for this "opinion." The letter attaches no disclosure of NHG or AJP organizational documents or financial summaries as did his pre-

dissolution reports. He ignores the additional $300,000 Mr. Wazny received in 2013 and 2014 because Mr. Wazny "is expecting to get a written confirmation of the loan soon." CP 828. He documents that the husband received over $400,000 in 2014, the year after the divorce, CP 832, but he is not competent to comment upon why Mr. Wazny's income was depressed in 2012 or 2013 if it was because of fraud. He documents that the community had a beginning capital account of $91,132 just after the divorce—an amount that was not disclosed or divided. at the time of the CR 2A. [2] At minimum these were un-distributed profits to which Ms. Wazny was also entitled in addition to the $300,000 in laundered funds from partner Chopra—in short, the skeletal data provided by Deaton supports the wife's documentation, is incomplete, and does not speak to the issues of fraud or nondisclosure of funds that came from Chopra's account. His letter and report create more, not less, issues of material fact regarding disclosure of the assets of the parties.

Mr. Deaton failed to compare or analyze distributions to Chopra, or provide parallel information regarding Chopra's capital account, which is the directly relevant issue to determine if Mr. Wazny took his distributions when taken by the partner. Mr. Deaton's report is a glossy version of

[2] Mr. Deaton and/or Mr. Wazny therefore had this information when his report was written in July 2013, and when the CR2A agreement was signed, in September, but Mr. Deaton did not discuss a capital account in his original valuation analysis . CP

Steve Wazny's undocumented verbal representations, and if Steve hid funds, then his report is not accurate or helpful. The question of fact must be resolved by the fact finder at trial.

Respondent cites to pretrial documents in 2013 that Deaton acted as a joint expert—CP 788-789. However, as to post dissolution, this is patently false. He took on an advocacy role as a consultant to Mr. Miller in 2015-2016. CP 827-835; 10356—1037.

False claims of a 3-year delay in wife's bringing of the motion.

Respondent bases numerous arguments (irrelevant to the merits) on the length of time since the dissolution decree was entered November 21, 3013. Yet, within one month after the dissolution, from January to March 2014,the parties already had started discussing known remaining issues. There was the amount owed by Mr. Wazny for the last month of living expenses, the issue of whom to pay the ELOC (called the second mortgage by the husband), and the deck cost. CP 984-993 The wife sought early arbitration, in July 2014, but Steve Wazny declined that option. CP 851.

Ms. Wazny could not have brought the balance of her motions without the financial data, obtained 14 months after the dissolution (CP 318—409), and she needed that year of post-divorce financial data to demonstrate her claims about the post CR2A money transfers of her ex-

husband. She learned of the account in the partner, Chopra's, name from which Mr. Wazny received $300,000.00 in March of 2014,CP 714, and she could not have proven that his doubled income was a sustained pattern without at least a year of financial activity after the divorce. She did not obtain the Key Bank business bank account information until produced in March of 2015. CP 68.

New counsel notified Steve Wazny's counsel in December 2014 that the issues would need to go to court if arbitration was not agreed, and that financial information was being subpoenaed. CP 852 .Mr. Wazny was advised that additional financial information was subpoenaed in February 2015. CP 853-4. When counsel for Ms. Wazny tried to negotiate, Mr. Wazny was nonresponsive. (see letters May and July, 2015. CP 855-859.) When he finally responded, he asked Ms. Wazny for 30 more days to consider the issues. CP 859. Unknown to the wife, who had openly shared her issues and concerns, the husband used his requested "delay" to secretly retain Mr. Deaton as a private consultant. The respondent's claims about a "3 year delay" are loud, but hollow.

The parties agreed in January, 2016, to a court date. CP 711-12. Thereafter, the case schedule was governed by availability of the court.

Relief granted regarding the cost of the deck included interest from – July 1, 2015 (CP 759), and for support due, interest from October 1, 2013—CP 1017. Accordingly, the wife was entitled to relief months or years earlier than she was able to schedule the recalcitrant husband to court. The time from decree entry and filing of motions was 2 years and 2 months (not "3 years as stated by husband)—the periods of necessary investigation and attempted negotiation prior to that are well documented.

Lack of facts and lack of authority characterizes the responding brief. It repeatedly denies that there are facts to support the wife's position, but it never refers to –nor denies--the more than 635 pages of source financial and other documents filed by the wife. It relies upon self-serving declarations by Mr. Wazny and his partner Mr. Chopra, bereft of documentation, for supposed transactions for large amounts of money which would reasonably be expected to be documented in the ordinary course of business. It cites no authorities contrary to the laws and cases cited by the Wife in her opening Brief. Finally, it liberally quotes from the arguments before the Court on March 11, 2016, as if the arguments create evidence, but they are merely argument by counsel and not evidence.

STANDARDS OF PROOF: The Trial court erred by assigning incorrect standards of proof regarding the wife's motions and claims.

Respondent's brief appears to admit most of the issues presented regarding Standard of proof because it cites no contrary authority.

PREPONDERANCE OF THE EVIDENCE, FOR ISSUES OF UNDIVIDED PROPERTY AND UNDISCLOSED PROPERTY.

The wife filed distinct motions for undisclosed and undivided assets CP 714—719 and to vacate portions of the CR2A for business valuation and debt tainted by fraud and misrepresentation. CP 720—723.

For undisclosed and undivided property, Mr. Wazny agrees that *Marriage of Tang* 57 Wn. App 648, 789 P.2d 118 (1990) held that undivided property would not be a subject for a vacate, but should be proved based upon the initial proof burdens, preponderance, and presumption of 50% community property. Respondent's brief p. 12, fn. 9. This highlights the wife's issue on appeal, that by lumping all property issues into a "vacate analysis", although the wife did not do this in her post decree motions, the trial court assigned an improper burden of proof for undisclosed or undivided property. Nowhere does respondent provide authority or argument contrary to the CP presumption. RCW 26.16.030; *Marriage of Street* 125 W.2d 865, 890 P.2d 12 (1995). or proof needed to change an asset acquired by community property to separate property. *Marriage of Lindsey* 101 Wash.2d 299, 678 P.2d 328 (1984).

HUSBAND HAS BURDEN OF PROOF TO SHOW GOOD FAITH:

Respondent, without citing authority, claims that the husband has no burden to show good faith because the alleged transactions are between himself and a business partner, and not between himself and his wife. The plain words of the statute include "a transaction between them directly or by intervention of a third person"(RCW 26.16.210)—in this case, business partner Chopra. Good faith is statutorily mandated.

Respondent ignored and thus admitted the common law rule of the fiduciary relationship between husband and wife, see wife's brief page 25. There is no reasoned response or authorities by the husband that contradicts the wife's authorities and analyses that the undivided NHG business, its undisclosed profits, and undisclosed profits from AJP, should be litigated under the preponderance standard.

The husband is also confused about the nature of the post decree issues. NHG is undivided—omitted from the CR2A—so that even if disclosed, it also must be divided. The NHG and AJP profits/capital accounts / distributions are *both* undisclosed and undivided. That is why as to them the "undisclosed" section of the CR2A specifically provides for division 50-50, implying a preponderance burden of proof. It is up to the husband to demonstrate good faith in nondisclosure of the undenied assets, which would include stablishing a legitimate explanation of where the funds came from and why they were not disclosed.

VACATE ISSUES MUST BE SHOWN BY CLEAR, COGENT, AND CONVINCING EVIDENCE, UNLESS PRESUMPTIVE FRAUD APPLIES.

While the husband has endorsed the "clear, cogent and convincing" burden in his brief, it only applies at trial *Marriage of Maddix* 41 Sn. App 248, 703 P.2d 1062 (1985), it only applies to the vacate issues, and it only apples if not modified by other law.

The husband failed to provide a discussion or analysis of the wife's rights to a presumed fraud finding, based upon the either the presumption of fiduciary duty or burden of proof of challenged party, or based upon the Uniform Fraudulent Transfers act, extensively quoted and analyzed in the wife's brief. Responding brief failed to address these issues.

FOR VACATE ISSUES, (value of AJP and Sham debts) THE WIFE IS ENTITLED TO RELY UPON THE UNIFORM FRAUDULENT TRANSFERS ACT (UFTA).

The husband first argued that the wife brought her UFTA arguments only in a motion for reconsideration. Further, by not respecting the 2 distinct motions brought by the wife, and by keeping part of the post-decree motion before the judge and transferring part to the commissioner, the court errantly applied the fraud standard to the post-decree property argument. The motion for reconsideration was needed to analyze the different standards of proof. The court in its discretion considered and ruled on the issues so this point is moot.

The husband failed to provide any authority that a wife is not entitled, like any other litigant in the world, to use the circumstantial evidence presumptions under the UFTA. The statute is the primary authority, and it applies to any "creditor" and "debtor", and is broadly interpreted There is no counter argument by Respondent.

Respondent attempts to distinguish *Sedwick v. Gwinn* 73 Wn.App. 879, 873 P.2d 528 (1994). Respondent admits that the UFTA was correctly applied to a dispute between a husband and wife, but claims without authority that analysis only applie in a "summary Judgment" context where the issue is whether or not there is a genuine issue of material fact. Yet, under *Maddix,* a denial of a show cause to vacate was reversed for trial on the same standard--whether or not the wife had articulated a genuine issue of material fact for trial.

Respondent did not bother to refute the wife's dispositive authority for the need to consider the UFTA standards in a fraud case between spouses, such as *Clayton v. Wilson*, 168 Wn.2d 57, 227 P.3d 278 (2010). In *Clayton,* the court systematically considered each of the distinct UFTA bases for fraud and presumptive fraud and use of circumstantial evidence.

Respondent also did not refute numerous cases cited in the wife's brief that it is reversible error for a court to refuse to consider circumstantial evidence, particularly because in fraud, the issue of whether a person is dishonest does not lend itself to direct proof. Dishonest people do not document or admit their

dishonesty. *Dept. Labor and Industries v. Rowley* 340 p.3d 929, 185 W.App 154 (2014) ; *Tan v. Le* 177 Wn.2d 649, 300 P.3d 356 (2013).

The wife directly challenges the trial court's weighing of the evidence at the show cause hearing, rejecting circumstantial(bank and financial records) evidence and erroneously finding without a trial no "high degree of certainty" that the unexplained money was hidden, and that it was "not clear" that over $3 million of distribution to Chopra did not necessarily prove that the husband had elected to defer receiving his 5%. CP 1026-7. The court accepted the Deaton opinion that a tax form filed by AJP correctly stated distributions to Mr. Wazny in 2012 at approximately $24,000, CP 1028, without regard for the additional $300,000, proved by the wife, to have been routed through Mr. Chopra's private account and later given to Mr. Wazny. The court asked the impossible—that Ms. Wazny prove through Mr. Wazny's tax returns for 2013 and 2014 that Mr. Wazny reported the $300,000 as income. CP 1029. That would be direct evidence, but it is not logical to require a party to produce direct evidence of a covert, unreported, hidden asset. It is not Ms. Wazny's task to prove that Mr. Wazny reported his gain as income, but that it existed (uncontested), it was un-explained, and it was presumably community property.

By rejecting circumstantial evidence, the trial court compounded its error in applying the clear, cogent and convincing standard to all issues, not only the vacate issues, and failing to apply presumptive fraud and good faith considerations in considering a genuine issue of material fact.

II. ASSIGNMENTS OF ERROR

A. The trial court Erred as a matter of law by not ordering that an undivided community business, NHG, be divided 50-50 per the CR 2A agreement

First, Appellant clarifies that NHG was omitted from the CR2A and Respondent does not dispute case-law cited that the parties continue to hold this asset as tenants in common. Wife's brief at 33.

For the first time on appeal, Respondent advances a new factual argument, that NHG was acquired after the date of separation by the husband. The wife had no opportunity to respond to that claim at the trial court level. It is significant that NHG was valued as part of the community business agreement with Mr. Chopra as a community asset. CP 488—504. It was presumed to be a community asset, and it is described as a separate entity from AJP. There is no information that community funds were not used to acquire this Jack-in-The-Box restaurant.[3] The 2013 report states

[3] The husband admits at page 5 of his brief that NHG was purchased with the community business partner in December 2011—a little more than a month after

there are no separate shareholder agreements between the community and NHG. CP 488. The same contract between the marriage community and Mr. Chopra, from 2010, is cited in Mr. Deaton's recent report, applying to both AJP and NHG. CP 829—833. Mr. Chopra only refers to one agreement when the parties went into business together, in September, 2010. CP 837. The CR2A listed real estate, and business entities. CP 6. To now claim that the catch-all provision included an "intent" that NHG is not community property is disingenuous.

That NHG is not listed in the CR2A is not the fault of the wife. It is an omission by both parties. As a matter of law, the wife owns NHG as a tenant in common and is entitled to have it valued and divided 50-50, per the CR2A. The trial court erred in denying her relief and her fees.

The trial court Erred as a matter of law by not awarding 50% of the uncontested, undisclosed 2013 community distribution for NHG to the wife

The husband admitted that as to the one (or 3 in recent years) restaurant in NHG, "we have pulled one payment each year (AJ Chopra for $275,000 and me $32,000 approximately.)" CP 807. He has admitted that the wife's extrapolation from the business records is accurate as to his compensation the year of the divorce and 2014 and 2015. Mr. Deaton's

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separation in October. How it could have been an acquisition based upon separate earnings is not explained.

letter, disclosed on March 7, 2016, only mentions NHG for the year 2014 but verifies that Mr. Wazny received $31,667.00. This *agrees* with the wife's claims of the amount of distributions in which she holds a share. The wife's claim for the substantiated 3 years of distributions from NHG are undisputed. The one in 2013, less than 2 weeks after the decree was entered, is undisclosed and those in 2014 and 2015 are hers, as omitted assets from the CR2A, as a matter of law.

Respondent claims (and the trial court found) that it was the wife's burden to get updated data on NHG before agreeing to the CR2A. But both parties omitted this asset—and new data was in the exclusive control of the husband, who was not required to demonstrate good faith, even though he collect over $30,000 a few days after the decree was signed. The court erred in finding that the wife had enough information about NHG to protect her interests. CP 1081. Respondent argues that everything was disclosed in responses to interrogatories. CP 964-974. However, the undated response filed by Mr. Wazny does not specify the debts and assets or claimed valuations. The interrogatories are "deemed continuing" and "in the event you discovery further information that is responsive to these interrogatories," to be supplemented. CP 965. The husband did not supplement the financials of NHG. No amount of

additional discovery could have found the post-decree funds, buried in the NHG account, paid to the husband, days after the decree was entered

The wife is also entitled to divide the property because the husband breached his fiduciary duty.

Respondent failed to comment upon or to contradict *Seales v. Seales* 22 W. App 952, 590 P.2d 1301 (1979), regarding a spouse's fiduciary duty.

The trial court Erred as a matter of law by not awarding 50% of the uncontested distribution from NHG to the community to the wife, for 2014, 2015, and until the business is divided.

The Respondent husband admitted to the subsequent distributions but is now claiming that the asset is not a community asset. This is a new defense and not a part of the record. The undisputed payments from this undivided asset should be awarded to the wife as a matter of law.

B. The Trial court Erred as a matter of law that the wife agreed, in the CR2A agreement, to pay the BOA Equity line of Credit.

The husband's first response to this issue on appeal is that the wife did not move for revision of the Commissioner's Order, entered on entered on June 28, 2016. CP 1019 to 1022. Parts of it were not final. It ordered an offset to be determined after the husband provided data, by July 12, 2016. It deferred all property related claims for undivided or undisclosed property to the trial court. CP 1022. The trial court's final order

performed the offset and finalized the net judgment of the parties. CP 1114-1115. The case was not ripe for appeal until a final order that resolved all pending issues was entered. The order of the commissioner was appealable as a matter of right without a motion for reconsideration.

> . . . unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.
>
> RCW 2.24.050

The procedural objection regarding motions for reconsideration by Respondent has no basis in law, and nor does it prove that the fees expended for issues before the commissioner could not be segregated.

Respondent husband cited no authority contesting that the CR2A must be strictly construed and does not contest that the wife never initialed the hand-written interlineation that says "wife to pay 1st and 2nd". ROP March 11, 2016, pp 36—37.

The husband simply argues without authority, that the CR2A is clear and unambiguous. If that is so, why did not the interlineation say "ELOC" and not "2nd" ? The CR2A does not list the debts with specificity—there are no account numbers. There is no indication that the ELOC is the same as the "2nd"—if it is, why does the ELOC still remain on the list of debts the husband will pay? The wife is clear that she did not agree to pay the

ELOC. The Decree, does not clear up the issue, it recites that wife will pay the "1st and 2nd but does not state the wife will pay the ELOC. As a matter of law, the CR2A, which was never initialed by the wife, is not effective in moving the debt from the husband's side of the ledger, (where it remains on the debt page) when no loan amounts are changed, and when the ELOC is approximately 1/3 of the husband's debt.

As a matter of law, the CR2A must be construed to assign the ELOC to the husband because it is ambiguous and the wife never signed a change.

Alternatively if the issue is analyzed under the motion to vacate, the ELOC must be one of the debts considered when the court reforms the debt distribution so that the financially superior husband actually pays some community debt.

Since the wife should not have been ordered to pay the ELOC, she must be reimbursed by the husband for the payments that she was ordered to make, and reflected in the final judgment. CP 1114-1115.

C. The Trial Court erred by finding that the wife's evidence of undisclosed property did not create cause for relief.

The Respondent husband has not contested that he received $300,000 from Mr. Chopra shortly after the CR2A was signed, or that he collected over $300,000 more from the business in 2014 than during the years the dissolution was pending. He did not contest that the $300,000 was not in the ordinary course of business or that they are, if distributions,

community assets. Although he told Mr. Deaton in 2015 that he planned to get documentation of the loans "soon", none was ever provided.

The only issue of fact contested by the husband regarding the undisclosed $300,000 was whether they are fraudulent transfers laundered through the husband's partner's account, or legitimate "loans" distributions. Given the presumption of community property, fiduciary duty of the husband, no loan document, no payments, and transfer from Chopra to Wazny was admittedly outside the ordinary course of business, the court should have ordered that the funds are secreted community assets, as a matter of law.

However, at minimum there is a genuine issue of fact regarding the funds. The heavy reliance upon the Deaton report is misplaced, since Deaton simply believed Mr. Wazny's verbal report about an undocumented loan. Further, the new Deaton report documents that at the time of the divorce, Mr. Wazny had a "capital account" –which he did not disclose to the parties prior to the CR2A—from which draws are taken-- in the amount of $76,545 (December, 2012, time of valuation); and $91,132 (time of divorce.) CP 832. This amount was taken during 2014, (immediately after the decree was entered) as capital distributions at the rate of $7778.00 per month—almost a year of additional monthly income

CP215 (CHART) and 294-314(source documents). These community funds are in addition to the unexplained $300,000.00.

Mr. Deaton's report documents that Mr. Wazny left $91,132 hidden in the business account; Deaton cannot comment on the hidden $300,000 since he accepted Mr. Wazny's verbal claim that those funds are a loan. Further, if Mr. Wazny had the $91,132 in a capital account, then his claim that the Chopra funds were "loans" loses credibility. He did not need a loan for at least the $91,132.00.

As to this almost $400,000 that was undisclosed at the time of divorce, the wife is not required to prove fraud for property that presumptively belongs to her because the business belonged to the community in 2012 and 2013. Additionally, the husband has not shown any good faith, no documentation, nor any explanation of any of the statutory fraud circumstances. On this record, the wife was entitled to a judgment as a matter of law to 50% of the capital account of $91,132, plus 50% of the $300,000.00 of :distributions (purportedly "loans). Alternatively, she is entitled to a trial because she has raised a genuine issue of fact, in which she need only prove her case by the preponderance of the evidence, with the husband bearing the burden to prove good faith.

Presumptive Fraud under RCW 19.40.041(a):

However, if the court finds that the wife must prove fraud, under UFTA, the wife is entitled to a presumption of fraud, under 3 separate sections of the statute; the husband is obligated to show good faith and prove he fulfilled his fiduciary duty; the wife's is entitled to rely upon circumstantial evidence to demonstrate presumed fraud, by substantial evidence. None of the authorities, nor the specific language of the UFTA statute presented by the wife were contested by the husband.

Trial court erred regarding fiduciary duty of husband

The husband does not deny that he had a fiduciary duty. He had control of the data. He was subject to interrogatories that were continuing in nature and he did not update. He quotes part of the March 11 2016 transcript, which is only argument to the court, regarding whether the wife could have deposed Mr Chopra. However, the wife provided her testimony that she had no idea where Mr. Chopra's bank account was or where the funds she suspected existed, were hidden. She learned about the actual account when she received it among other papers months after the divorce. CP 722-23. Because Mr. Wazny did not have possession of the money until after the CR2A was signed, she could not have discovered it in his possession. Only later could she know where to look for the funds, and construct her trail of evidence from the business, to Mr. Chopra, and back to Mr. Wazny. The barriers to the wife to learn of the private

financial transactions of the husband, in the face of his motive to gain hundreds of thousands of hidden dollars, places the equities in this case upon disclosure and fiduciary duty and not upon diligence of the wife.

The Trial Court erred by denying the Motion to Vacate the debt distribution.

Without discussing fiduciary duty, equity or fairness, the husband's response to this issue is that the wife "could have" demanded more proof of the debts and that there is no law against the husband having someone else pay his debt. The husband did not deny that he did not pay for credit cards that he listed, or for a trophy boat loan he listed. He claims he had a Lexus loan, but characteristically, produced no proof, while the wife proved that the loan was not a purchase loan but a subsequent loan on the daughter's jeep.

The purpose of a final resolution in a divorce is to breach a "fair and reasonable settlement." CP 2. If the financially dominant party, agrees to pay purported debt that he knows he will not pay, then, the agreement is not fair and equitable. Here, the financially dominant husband took less debt than the wife, and a post-divorce scrutiny of finances verifies that he has paid only a small portion of that lesser debt. Some of it never existed or it was paid by his business for him, and the

ELOC he claims the wife agreed to pay. This distribution should be vacated and re-distributed.

D. The Trial Court erred by denying the Motion to Vacate the AJP division.

The wife presented a material issue of fact that community income had been withheld from the evaluator, (since the husband hid his distributions in Mr. Chopra's account until after the divorce), and that the 9 months of business operation in 2013 would have significantly changed the business valuation. The husband's Deaton report never addressed the impact of any hidden funds, so his opinion is irrelevant.

The Trial Court erred by denying Attorneys Fees to the Wife and by failing to require adequate documentation of attorneys fees and failing to segregate the husband's attorneys fees.

The husband did not contest any of the authorities that the wife cited regarding attorneys fees. It is clear that both parties prepared all issues for the initial hearings before the judge, who then referred part of the issues to the Commissioner. Those responsive papers by Mr. Wazny were prepared prior to June 2016, i.e., as to the quit claim deed, CP 771, 810; the deck CP772; 803-807;811--814 the living expenses owed by the husband; CP 797-802 and the liability for the ELOC CP 771, 790-796, all dated and filed March 7, 2016, and later referred to the Commissioner. Yet the trial judge awarded 100% of the husband's fees up to June 1, although after

March 11, the next hearing was before the Commissioner. Based on time of preparation, fees were awarded to the husband as to issues on which the wife prevailed, and that were before the Commissioenr.

Wife's fee request, for property per CR2A:

The wife requests the Court to reverse the trial court decisions and award her fees as the prevailing party regarding undisclosed and undivided property, and vacate issues, per the CR2A, CP 1—8, and order the husband's fees disgorged.

Wife's fee request for Decree Enforcement issues of funds due, deck on family home, quit claim deed, interpretation of CR2A"

The husband fails to articulate a reason why the wife should not receive an award of fees after the need to ask the court to award $35,000 for replacement of the deck and funds for her support in the last month before the dissolution. The husband admits that these questions regarding "omission or clarification" of the Cr2A also entitle the prevailing party to attorneys fees. CP 3 and Husband's brief at 21.

The Trial Court erred in failing to segregate the husband's fees, and awarding amounts for undocumented and clerical work.

The husband did not defend the award of fees for clerical work, nor cite responding authority.

The husband defends the trial court's award of $1000 for fees requested for an unidentified attorney for research over a period of 6

weeks. But on this record, the fees are undocumented and cannot be argued to be supplemented on appeal. The Appellant requests that the fee award be reversed, because she her appeal be granted and she, instead, should be awarded fees.

However, if the Court of Appeals does not reverse on the merits, it should reverse the fees since they were not segregated. If it allows fees, it must reverse the $1000 general legal fee and the clerical fees, and it should divide the remaining fees awarded by 50% since Mr. Miller and the court were unable to segregate fees.

Fees on Appeal

Finally, appellant requests fees on appeal per the CR2A and based upon need and the ability to pay. Even if she is not entitled to CR2A fees for issues of undivided or undisclosed property, she should be awarded fees per RCW 26.09.140.

VI. CONCLUSION:

The Court of Appeals should grant relief as requested.

Respectfully Submitted this 20th day of March, 2017.

/s/ Jean Schiedler-Brown

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No. 49393-4 II

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CERTIFICATE OF SERVICE OF THE APPELLANT'S REPLY BRIEF

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CERTIFICATE OF SERVICE

I HEREBY CRTIFY THAT I CAUSED A TRUE COPY OF THE Appellant's Reply Brief and this certificate of service to be delivered to a legal Messenger for hand delivery by March 21, 2017, to Counsel for Appellee's address of record, to wit:

Mr. John A. Miller, esq
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1019 Regents Blvd, Suite 204
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On this 20th day of March 2017

/s/ Jean Schiedler-Brown

Jean Schiedler-Brown, WSBA # 7753
For Appellant Shantel Tracy-Wazny